

EXHIBIT 35

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 STAR AUTO SALES OF BAYSIDE,
5 INC., ET AL.,
6 Plaintiffs,

7 Civ. No. 18-CV-5775 (ERK) (CLP)

8 -against-
9 VOYNOW, BAYARD, WHYTE AND COMPANY,
10 LLP, ET AL.,

11 Defendants.

12 -----X
13 November 28, 2023
14 10:00 a.m.
15 Virtual Deposition

16 THE EXAMINATION BEFORE TRIAL of
17 DOUGLAS SOSNOWSKI, a Witness, held remotely,
18 before a shorthand reporter and Notary
19 Public within and for the State of New York.
20
21
22
23
24

25 Job No. CS6326406

A P P E A R A N C E S:

MILLMAN LAW

3000 Marcus Avenue

Lake Success, New York 11042

BY: JOSEPH LABUDA

For the Plaintiff

Also present:

Jeremy Koufakis

Jacqueline Cutillo

MARSHALL DENNEHY

620 Freedom Business Center

King of Prussia, PA 19406

BY: MAUREEN FITGERALD

For the Defendants

* * *

1 A. In the last ten years.

2 Q. How many times?

3 A. Five times.

4 Q. Have you used or are you familiar with the
5 Reynolds and Reynolds accounting system used by
6 automobile dealerships?

7 A. Yes.

8 Q. How did you obtain that familiarity?

9 A. From my time as an auditor.

10 Q. That was at some point before 2001; is that
11 correct?

12 A. Correct.

13 Q. So is it fair to say that you have not worked
14 with or used Reynolds and Reynolds in over twenty
15 years; is that correct?

16 A. Correct.

17 Q. So is it your testimony opinion that a tax
18 accountant who accesses client's accounting system
19 is doing something more than tax work?

20 A. Yes.

21 Q. In all cases?

22 A. In most cases.

23 (Mr. Franzen entered the Zoom.)

24 Q. You are a forensic accountant?

25 A. Yes.

1 MR. LABUDA: Objection. You can
2 answer.

3 THE WITNESS: Not that was
4 provided to Star.

5 EXAMINATION BY

6 MS. FITGERALD:

7 Q. Well, my question is, though, whether or not
8 there were letters issued by Voynow, you acknowledge
9 based upon what is listed in the appendix, that the
10 evidence shows there were engagement letters issued
11 by Voynow?

12 MR. LABUDA: Objection.

13 You can answer.

14 THE WITNESS: No I don't think
15 they were ever issued.

16 EXAMINATION BY

17 MS. FITGERALD:

18 Q. On what basis, based on the facts and documents
19 deposition testimony do you make that statement?

20 A. Because there are no copies of assigned
21 documents and the clients have told me that they did
22 not receive those engagement letters.

23 Q. Okay. So did you review the deposition
24 testimony from the owners of Star, as to whether or
25 not they actually testified that they never received

1 A. I don't think so.

2 Q. Let me ask you this. You don't think any
3 engagement letters were sent. And if I understand
4 your answer, you are relying upon statements by, as
5 told to you by Jackie Cutillo and by Michael
6 Koufakis; is that correct?

7 A. Correct.

8 Q. So is it fair to say that you did not consider
9 the evidence and the documents that were produced in
10 the case that suggest otherwise?

11 MR. LABUDA: Objection. You can
12 answer.

13 THE WITNESS: There is no evidence
14 suggesting otherwise.

15 EXAMINATION BY

16 MS. FITGERALD:

17 Q. Were you provided with the metadata showing
18 that the engagement letters were updated on an
19 annual basis?

20 A. No.

21 Q. Would that be something that's important
22 whether or not there is any evidence -- withdrawn.

23 Were you provided with billing records from
24 Voynow?

25 A. Yes.

1 Q. What else then, did you rely upon other than
2 the conversations, for your statement in your report
3 that Voynow never documented its service s in an
4 engagement letter prior to December of 2016?

5 A. I relied on the lack of actual evidence.

6 Q. Are e-mails evidence?

7 A. They can be evidence, but they don't prove that
8 there was an engagement letter.

9 Q. Are billing records evidence?

10 MR. LABUDA: Objection. You can
11 answer.

12 THE WITNESS: Could you be more
13 specific? They can be evidence, but not
14 for an engagement letter sent to
15 clients.

16 MS. FITGERALD: Again, sir I am
17 talking about -- withdrawn.

18 Did you see --

19 I will move on. I will move on. Forget it. I
20 will move on now.

21 EXAMINATION BY

22 MS. FITGERALD:

23 Q. Is it your understanding that Star received an
24 engagement letter from Voynow on or around December
25 of 2016?

1 MS. FITGERALD:

2 Q. To the extent that Star did not produce interim
3 letters that it claims to have received in this
4 case, do you acknowledge the possibility that it
5 discarded those letters?

6 MR. LABUDA: Objection. You can
7 answer.

8 THE WITNESS: Yes.

9 EXAMINATION BY

10 MS. FITGERALD:

11 Q. Do you recall testimony from some of the owners
12 that they discarded documents they received from
13 Voynow at the end of each year?

14 A. Yes.

15 Q. So knowing that, do you acknowledge the
16 possible that Star also received engagement letters
17 from Voynow and discarded those at the end of each
18 year?

19 A. It's possible.

20 Q. You stated in your rebuttal affidavit that
21 Mr. Shirk discussed accounting services other firms
22 provided to Star after Voynow was terminated and the
23 Rosenfield company has no relevance to this matter.

24 Do you recall that statement?

25 A. Yes.

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2 the assistance we do provide is not to be
3 construed as an oversight function in any respect
4 of a company's accounting system.

5 Therefore, there should be no
6 reliance stated or implied by a company on the
7 accuracy of the assistance we are to provide."

8 Do you see that?

9 A I do.

10 Q So then do you agree that should a
11 jury determine these letters were issued, then to
12 the extent you've offered an opinion stating
13 Voynow was providing an oversight function, that
14 opinion is no longer supported by the record?

15 MR. LA BUDA: Objection.

16 You can answer.

17 A I would need to give it some more
18 thought.

19 Q All right.

20 If we go further down on page 2 of
21 exhibit 4 Voynow's engagement letter states, "we
22 will not honor or otherwise verify the data
23 submitted. Accordingly our engagement cannot be
24 relied upon to disclose error, fraud or other
25 illegal acts that may exist."

1 Douglas Sosnowski 79

2 Again, that disclaimer, to the extent
3 the jury accepts the evidence that Voynow did in
4 fact issue this opinion letter, do you agree that
5 negates your opinion that Voynow was required to
6 detect fraud?

7 MR. LA BUDA: Objection.

8 You can answer.

9 A I don't think it was my opinion they
10 were required to detect fraud.

11 Q You do not hold the opinion Voynow
12 was engaged to detect fraud irrespective of any
13 engagement letter, correct?

14 A I don't know for sure that they
15 weren't.

16 Q Well, what is your opinion as the
17 expert in this case? Was Voynow retained to
18 detect fraud?

19 A There is no written engagement
20 letter. So it's difficult to say what they were
21 retained to do over a period of twenty-one years
22 and I don't know if at any point during those
23 twenty-one years they were asked to look for
24 fraud. So I can't answer that.

25 Q You see no evidence in any of the

1 Douglas Sosnowski 91

2 Q You made the statement that Voynow is
3 the accountant of record, okay?

4 A Right.

5 Q I have to know. I'm the attorney on
6 record with the court for the purposes of this
7 case.

8 A Right.

9 Q I asked you when you referenced
10 accountant of record, who is Voynow on record
11 with?

12 MR. LA BUDA: Objection.

13 He can answer.

14 A With the IRS.

15 Q Was Rosenfield the accountant of
16 record after Voynow's services were terminated?

17 A I believe so.

18 Q Is Withum Star's current accountant
19 of record?

20 A I have no idea.

21 Q You state on page 2 of your report,
22 number 7, that on an interim\quarterly basis
23 Voynow made periodic visits to Star. Do you see
24 that?

25 A Yes.

1 Douglas Sosnowski 94

2 He can answer.

3 A I didn't know one way or another.

4 Q Did you review the deposition
5 testimony of the Voynow accountant?

6 A I did.

7 Q Do you recall that they all testified
8 they did not have remote access at Star prior to
9 2017?

10 A I did not remember that.

11 Q Did you see any evidence in Voynow's
12 documents or in Star's records that Voynow
13 accessed Star's accounting records remotely?

14 A No.

15 Q If you were to assume there is no
16 evidence and that Voynow could not have accessed
17 Star's records prior to 2017 remotely, would you
18 then agree that the only time Voynow could have
19 accessed or reviewed any of Star's records was
20 when it was physically on-site?

21 MR. LA BUDA: Objection.

22 He can answer.

23 A No.

24 Q In what way could Voynow have
25 accessed Star's records when it was not on-site?

1 Douglas Sosnowski 95

2 A They could have contacted someone at
3 the dealership and asked them to send over a fax
4 or e-mail.

5 Q All right.

6 Having someone transmit a document is
7 different than logging in and accessing an
8 accounting system, is that correct?

9 A Yes.

10 Q Would you agree if Voynow did not
11 have access prior to 2017 Voynow would not have
12 been able to access Star's accounting system
13 unless it was on-site?

14 A Yes.

15 MR. LA BUDA: Objection.

16 He can answer.

17 Q When you formulated your opinions in
18 this case, did you consider or recall the evidence
19 provided by the Voynow accountant as to what
20 documents they would bring if any when they would
21 go to Star to physically visit?

22 A Yes.

23 Q What is your recollection as to what
24 documents Voynow brought?

25 A I don't recall specifically.

1 Douglas Sosnowski 96

2 Q Do you recall Voynow bringing
3 anything other than the prior year's tax return?

4 A I don't recall what the testimony
5 was.

6 Q Do you think what Voynow was bringing
7 on-site is pertinent as to what the scope of its
8 engagement was?

9 A No, not at all.

10 Q If you were an accountant providing a
11 review or audit, you would be bringing certain
12 things that would be different than a tax
13 engagement?

14 A No, I would not.

15 Q Are you familiar with typical things
16 that one might use or see in a accountant's work
17 papers for a review engagement?

18 A Yes.

19 Q One of those things would be a
20 preprinted checklist?

21 A Yes.

22 Q Are those a checklist that are
23 published by somebody and has preprinted text by
24 one side and the other side is blank with lines,
25 right?

1 Douglas Sosnowski 98

2 where some anomalies were discovered by Voynow and
3 there was a notation on it that they had spoken
4 about it with Vivian, the office manager.

5 Q You recall the testimony of Bob
6 Seibel as part of your review on this case?

7 A Yes.

8 Q He testified that he inquired, for
9 purposes of his tax engagement, about that PTSM
10 entry and was told it was accrual. Do you recall
11 that?

12 A Yes.

13 Q Other than that document is there any
14 other document you are categorizing as an inquiry
15 work paper?

16 A I know there were more, but none that
17 come to mind specifically.

18 Q Did you see any documents that were
19 specifically labeled or designated "PBC" or as
20 prepared by client in going out work papers?

21 A No.

22 Q Did you see any documents analytical
23 review work papers in Voynow's documents?

24 A Yes.

25 Q Which document are you referring to?

1 Douglas Sosnowski 99

2 A I do remember a trend analysis they
3 were performing on inventory where they were
4 comparing inventory trends to statements to prior
5 product statements from the dealer.

6 Q That's the report you have referenced
7 dated January 19, 2015?

8 A Yes.

9 Q Other than that document is there any
10 other analytical review work papers contained in
11 the documents you reviewed?

12 A No.

13 Q Did you see any engagement
14 agreements?

15 A No. I'm sorry?

16 Q Did you see any engagement agreement
17 in these work papers for Voynow?

18 A No.

19 Q Do you agree that for a review you
20 would expect to see the signed engagement letter
21 in an accountant's work papers?

22 A Yes.

23 Q Did you see any management
24 representation letter in Voynow's work papers
25 signed by Star?

1 Douglas Sosnowski 103

2 A No, that's incorrect.

3 Q You last prepared a tax return for an
4 automobile dealership in 2001, is that correct?

5 A Yes.

6 (Discussion off the record.)

7 Q You stated that the timesheets
8 support your opinion that Voynow performed
9 procedures consistent with the financial statement
10 review?

11 A Yes.

12 Q What specifically is it about the
13 time sheets that you are relying upon?

14 A Well, first of all, just the volume
15 of time that they spent on these engagements and,
16 secondly, the time of the year that they would go
17 out.

18 If you were doing only tax work,
19 there would be no need to go out and perform
20 procedures at interim dates like Voynow did.

21 Q When you say, "timesheets," you're
22 relying upon the number of hours billed and the
23 timing of the on-site visits by Voynow?

24 A And the descriptions.

25 Q What specific description are you

1 Douglas Sosnowski 108

2 controllership services."

3 A Yes.

4 Q Do you agree there is nothing in
5 writing in any of the engagement letters that I
6 showed you or in the engagement letter that Star
7 acknowledges receiving wherein Voynow states it
8 was providing controllership services?

9 MR. LA BUDA: Objection.

10 He can answer.

11 A Not in any of the documents you
12 showed me, no.

13 Q Where in Voynow's records did you see
14 any evidence they provided controllership
15 services?

16 A Just, again, timesheets, billing
17 records and their work papers.

18 Q Identify for me any specific work
19 paper you believe is indicative of a
20 controllership service.

21 A Anything that would show they
22 reviewed bank statements and when they prepared
23 general journal entries or reviewed general
24 journal entries. Those were all controllership
25 references.

1 Douglas Sosnowski 110

2 Q Did you see any evidence where Voynow
3 was actually in a position to supervise Star's
4 employees?

5 A Yes.

6 Q In what capacity? Would it be when
7 they were physically on-site?

8 A No, they could also do it remotely.

9 Q Did you see any evidence that Voynow
10 was supervising Star's employees while it was
11 based in Trevoise, Pennsylvania and the employees
12 were based in Long Island?

13 A Just in the billing records.

14 Q Is there anything in the billing
15 records that suggest that Voynow, based in
16 Pennsylvania, is supervising employees working in
17 Long Island?

18 A Yes.

19 Q What?

20 A I can't remember specifically as
21 we're sitting here.

22 Q There is nothing that you cite to in
23 your report, either a document or a deposition,
24 that supports your opinion or your statement that
25 Voynow was supervising Star's employees, is that

1 Douglas Sosnowski 111

2 correct?

3 MR. LA BUDA: Objection.

4 You can answer.

5 A Yes.

6 Q Where in Voynow's records did you see
7 evidence that they were reviewing actual bank
8 statements?

9 A I don't recall specifically.

10 Q Is it fair to say there is nothing
11 you cited in your report document wise or
12 deposition testimony that supports that statement?

13 MR. LA BUDA: Objection.

14 He can answer.

15 A No, that's incorrect.

16 Q Tell me where in your report you
17 cited to a deposition or a document showing that
18 Voynow reviewed bank statements.

19 A Depositions of Debbie Theochakis and
20 Jackie Cutillo.

21 Q Where in your report?

22 A Those are all in Appendix A to the
23 report.

24 Q Do you understand under the rules
25 you're required to cite specific pages and

1 Douglas Sosnowski 114

2 Q You would expect if somebody was
3 providing controller services they would have a
4 lot of entries in the Reynolds system under their
5 log-in, correct?

6 MR. LA BUDA: Objection.

7 He can answer.

8 A There would be entries made by the
9 controller on occasion, yes.

10 Q Were you provided with any documents
11 or any evidence showing that Voynow ever made any
12 entries or recorded any transactions in Star's
13 Reynolds system?

14 MR. LA BUDA: Objection.

15 He can answer.

16 A It's my understanding they gave the
17 information to one of the office staff who would
18 actually post the entry, but no, they did not
19 access the computers directly.

20 Q There is no evidence in the Reynolds
21 system that you are aware of that shows that
22 Voynow ever made any entry in that system,
23 correct?

24 A Right. They didn't physically input
25 it into the system, no.

1 Douglas Sosnowski 116

2 describe as controllership functions, that was a
3 change in the relationship between Star and
4 Voynow?

5 A It changed how Voynow would be
6 perceived.

7 Q You don't reference in your report
8 any documents by citation or date as to the
9 specific invoices that reference purportedly
10 controllership functions, correct?

11 MR. LA BUDA: Objection.

12 You can answer.

13 A Correct, they're in Appendix A.

14 Q They're not cited by date or by bate
15 number in your report?

16 A No.

17 Q Correct?

18 A Appendix A is part of my report.

19 Q Do you understand in Federal Court as
20 an expert you can't cite to a whole invoice, to
21 thousands and thousands of documents? You have
22 the obligation to support the statements in your
23 opinion with specific references to citations, to
24 testimony and documents. Do you understand that
25 as an expert to Federal Court?

1 Douglas Sosnowski 118

2 to controllership functions?

3 A Yes.

4 Q What year did you believe those
5 invoices were issued?

6 A I think you can find examples in
7 every year.

8 Q Is it your contention when you make
9 that statement in your report that there are
10 invoices every year that referenced special
11 accounting services as requested related to
12 controllership functions?

13 A Not that specific phrase, no. It
14 might just have said accounting services. It
15 might not have been special accounting services.

16 Q Well, your report says that Voynow
17 indicated the performance of controllership
18 function, which is the language on exhibit 9,
19 correct?

20 A A lot of the examples, correct.

21 Q My question to you, prior to 2017 are
22 you aware of any documents issued by Voynow, any
23 invoices issued by Voynow, that indicated they
24 were providing special accounting services related
25 to controllership functions as reflected in this

1 Douglas Sosnowski 119

2 exhibit?

3 MR. LA BUDA: Objection.

4 You can answer.

5 A I don't think that phrase was used,
6 no.

7 Q All right.

8 So are you aware of "controllership
9 functions" being contained on any Voynow invoice
10 prior to 2017?

11 A I don't recall.

12 Q It's your opinion that when Star
13 received an invoice stating "controllership
14 function" its perception changed that's stated in
15 your report?

16 A No.

17 Q You said fundamentally changed the
18 relationship in your report.

19 A But not in 2017.

20 Q Are you aware, tell me the year,
21 point to me the document, any invoice that said
22 Voynow was providing services related to the
23 controllership function before 2017?

24 MR. LA BUDA: Objection.

25 He can answer.

1 Douglas Sosnowski 120

2 A I believe they did every year during
3 the twenty-one year engagement period.

4 Q What are you basing that answer on?
5 What document, bate stamp, date, anything?

6 A I don't have it just off the top of
7 my head.

8 Q Is it fair to say you don't cite to
9 anything to support that opinion in your report?

10 A Other than Appendix A, no.

11 Q In your report you don't cite to
12 anything specifically supporting that statement,
13 correct?

14 A Correct.

15 Q Do you recall the testimony from
16 Voynow as to why it was asked to provide the
17 services that were reflected in exhibit 9?

18 A Yes.

19 Q Do you recall that Star had decided
20 to appoint Jackie to positions that were held
21 jointly by Vivian and Debbie?

22 A No, that's incorrect.

23 Q All right.

24 Who did you understand to be the
25 replacement for Vivian and Debbie?

1 Douglas Sosnowski 121

2 MR. LA BUDA: Objection.

3 He can answer.

4 A I don't think there were, like,
5 direct one-for-one replacements for those two
6 employees. I think their duties were spread out
7 among the accounting personnel of the dealerships.

8 Q As of May 2017 did you understand
9 Jackie was performing a significant component of
10 Vivian and Debbie's duties?

11 A Yes.

12 Q Did you also understand that she had
13 no prior experience performing those duties?

14 A I don't know which duties she had
15 prior experience with and what she didn't. She
16 did learn new things I'm sure.

17 Q Did understand that Voynow was
18 providing assistance and training to her?

19 A Yes.

20 Q They were doing so at the request of
21 Star on or around May 2017?

22 A Yes.

23 Q You agree Voynow never prepared any
24 financial statements for Star?

25 A They assisted in making journal

1 Douglas Sosnowski 122

2 entries that went into the financial statements.

3 Q So the adjusting journal entries that
4 are referenced in Voynow's work papers is what
5 you're referring to, correct?

6 A Correct.

7 Q Those entries were in fact recorded
8 by Star personnel to its own books and records,
9 correct?

10 A Correct.

11 Q You agree that other than preparing
12 adjusting journal entries, which my client's
13 contend were for tax purposes, Voynow did not do
14 anything in terms of preparing Star's financial
15 statements?

16 MR. LA BUDA: Objection.

17 You can answer.

18 A I'm unclear what your question is.
19 They made adjusting journal entries I find other
20 than at year end. So, they weren't for tax
21 purposes. They were for reconciling the books and
22 records of the company.

23 Q All right.

24 On what occasion do you recall Voynow
25 proposing journal entries outside of the year end

1 Douglas Sosnowski 123

2 for purposes of their tax engagement?

3 A I don't think they ever proposed
4 entries outside of year end for purposes of the
5 tax engagement.

6 Q All right.

7 You agree Voynow never did the
8 monthly closings of Star's books and records?

9 A I didn't know that.

10 Q Do you recall the testimony from
11 Debbie Theocharis who stated that she and Vivian
12 did the monthly closing statements?

13 A I recall her saying Voynow did the
14 year end closing, but I don't recall what was done
15 on a monthly basis.

16 Q Did you see any evidence indicating
17 that Voynow ever did the monthly closings for
18 Star?

19 A I believe they assisted but not every
20 month.

21 Q So what evidence, where in your
22 report do you cite to any evidence that Voynow
23 assisted each month with the monthly closings of
24 Star's books and records? Where is that?

25 A I didn't say each month.

1 Douglas Sosnowski 124

2 Q Where is it? Where is the evidence?

3 A I said occasionally in Appendix A.

4 Q Where in Appendix A?

5 A I can't tell you as I'm sitting here.

6 Q You don't identify in your report
7 anything to support your opinion, correct?

8 A Correct.

9 Q Would you agree that preparing the
10 monthly and annual financial statements for a
11 dealership is a function of a controller?

12 A Yes.

13 Q You are aware that the Reynolds
14 system has the ability to retrieve all of the
15 log-in information that would have been generated
16 by any particular user, correct?

17 A Yes, correct.

18 Q Is it fair to say when you make your
19 opinions concerning Voynow in this case you were
20 never provided with the pool of all of the log-ins
21 or the summaries generated by Reynolds and
22 Reynolds with regard to what Voynow may have done?

23 A That's correct.

24 Q So you can't point to anything in the
25 Reynolds and Reynolds system that supports your

1 Douglas Sosnowski 125

2 opinion that Voynow was providing various
3 controllership functions, correct?

4 MR. LA BUDA: Objection.

5 He can answer.

6 A No, I don't believe they accessed the
7 Reynolds system directly.

8 Q Would it be possible for a controller
9 of a combined seven automobile dealership group to
10 do his or her job six days out of the year?

11 MR. LA BUDA: Objection.

12 You can answer.

13 A I don't know if I can answer that
14 question. Could you break it down for me?

15 Q Is it possible for a controller of a
16 family of automobile dealerships, seven group
17 dealership, to perform the functions of a
18 controller when they only had access to records or
19 only did work seven out of three hundred
20 sixty-five days a year?

21 MR. LA BUDA: Objection.

22 He can answer.

23 A They would need assistance. They
24 wouldn't be able to perform all the functions of
25 the controller, but they would be able to delegate

1 Douglas Sosnowski 126

2 to other office staff.

3 Q It would be the responsibility of
4 other folks within the office staff who were
5 actually working three hundred sixty-five days out
6 of the year to do those functions?

7 A Correct.

8 Q Correct?

9 A Correct.

10 Q In your rebuttal affidavit at
11 paragraph 21 you referenced Star's prior
12 accountant, the Kera Weiner firm. Do you recall
13 that?

14 A I do.

15 Q You state that the Kera Weiner firm
16 used a checklist demonstrating consulting services
17 provided to Star. Do you recall that?

18 A Yes.

19 Q I will show you what was marked as
20 Exhibit 8, which is one of the very few documents
21 you reference in this case by bates number. Could
22 you see the document, sir?

23 A Yes, I can.

24 Q This is a May 15, 1996 accountant's
25 checklist that is generated on a Kera Weiner form,

1 Douglas Sosnowski 137

2 (Recess taken.)

3 (After recess, the following ensued.)

4 EXAMINATION

5 CONT'D BY MS. FITZGERALD:

6 Q Mr. Sosnowski, turn to page 7 of
7 your report.

8 A Twenty-seven?

9 Q Page 7, under Internal Controls. You
10 state that, "some of the most important internal
11 controls involve effective safeguarding of cash.
12 Voynow knew or should have known that internal
13 controls for safeguarding cash at Star Auto were
14 inadequate."

15 What were the internal controls that
16 Star had implemented that you deem to be
17 inadequate?

18 A After a deposit is made, after a
19 deposit slip is filled out, the cash should not be
20 able to be accessed by the person who filled out
21 the deposit slip.

22 Star didn't have that control. So
23 the person who filled out the deposit slip still
24 had access to the cash until it was brought to the
25 bank.

1 Douglas Sosnowski 148

2 A Yes.

3 Q Does that mean it's fraudulent?

4 A I don't understand the question.

5 Q Is it a fraudulent number because
6 it's a round number?

7 A I don't understand.

8 Q Is the number in your report, which
9 is a round number, a fraudulent number?

10 A I believe that this fee was actually
11 picked.

12 Q So then you acknowledge a scenario
13 where a round number can be a legitimate number
14 and not a fraudulent number?

15 A It could be.

16 Q Is there anything in your report that
17 breaks down the 1.5 mil by year or by dealership?

18 A No.

19 Q Is it your understanding that this
20 1.5 mil was the total amount Star paid Voynow?

21 A Yes.

22 Q To the extent Voynow provided
23 services for other dealerships besides Toyota,
24 Nissan, Chrysler, Subaru, and Hyundai, those
25 services would be encompassed in the 1.5 million

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dollars?

A I believe so, yes.

Q Are you aware Voynow provided services for Mitsubishi?

A Yes.

Q And for Fiat?

A Yes.

Q And for Star Auto Body?

A Yes.

Q Are you aware that Voynow provided services for various real estate companies?

A Yes.

Q Your report does not distinguish between what portion of those fees went to services provided by Voynow on behalf of any of those entities I just looked at?

A Correct, it's a total fee.

Q You state that in 2015 the five main Star dealerships paid Voynow approximately \$143,365. How did you compute that number?

A I added up the invoices.

Q You added up the invoices issued by Voynow?

A Correct.

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2 Q Were those invoices issued in 2016 or
3 were those invoices issued that related to the
4 2015 calendar year?

5 A They were invoices that related to
6 the 2015 calendar year.

7 Q Some of those invoices then would
8 have been issued in 2015 as well as 2016?

9 A Yes.

10 Q Let me try that again, because I
11 don't think you understood what I was asking you.

12 When you competed the \$143,365 number
13 that's in your report, did that number relate to
14 bills that were issued and dated with the 2015
15 date or does the number relate to work that was
16 performed relating to Star's 2015 fiscal year?

17 A The latter.

18 Q All right.

19 To that extent you would have looked
20 at invoices that were issued in both 2015 and
21 2016?

22 A Yes.

23 Q When you competed that number, did
24 you make any distinction for any invoices that
25 related to tax audit services?

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2 A I don't remember.

3 Q Were you aware that there were tax
4 audits that took place in 2015?

5 A I am.

6 Q Would you agree that when a tax
7 accountant asked you represent a company in
8 connection with a tax audit that's going to
9 increase that company's tax bill?

10 A No.

11 Q Do you expect that the accountant's
12 going to provide services related to an audit for
13 free?

14 A No, they will charge for their time.
15 It's a separate consulting engagement.

16 Q When you talleyed the \$143,365, are
17 you able to break down how much of that related to
18 tax audit work?

19 A Not as I'm sitting here, no.

20 Q But you're aware at least some of it
21 did?

22 A No, I'm not sure.

23 Q You're not sure one way or the other?

24 A Right.

25 Q You're not able to break down what

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2 portion of that \$143,365 related to dealerships
3 other than Toyota, Nissan, Chrysler, Subaru, and
4 Hyundai?

5 A No, I just get a total.

6 Q There are facts figures analysis in
7 your report breaking down that total, right?

8 A Correct.

9 Q When you state the average per
10 dealership is \$28,673, did you just divide
11 \$143,365 by 5?

12 A Yes.

13 Q You state in your report that the
14 customary fee charged for preparation of a
15 corporate tax return in New York City in 2015 was
16 approximately \$9,700, correct?

17 A Yes.

18 Q You don't cite to any publication,
19 journal, treatise, or survey in your report that
20 supports that statement, correct?

21 A No, it's based on my personal
22 knowledge.

23 Q You don't append anything in your
24 report to support that statement?

25 A No.

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2 Q All right.

3 You don't distinguish in your
4 statement as to the specific type of corporate tax
5 return at issue, correct?

6 A The number that I am giving you is
7 for a tax return of an automobile dealership.

8 Q That's based on your personal
9 knowledge, correct?

10 A That is correct.

11 Q You told me you have not prepared a
12 tax return for a dealership since 2001, correct?

13 A That's correct, but I own an
14 accounting firm that prepares dealership tax
15 returns.

16 Q So that statement then is based upon
17 the billing of Brisbane Consulting, correct?

18 A No, it's Lumsden and McCormick is the
19 firm that we use to prepare the tax returns and
20 perform the audits.

21 Q It's based on the billing of Lumsden
22 McCormick, correct?

23 A Lumsden and McCormick.

24 Q Who are the clients of Lumsden who
25 are based in New York City, the dealership

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clients?

A I can't disclose that.

Q You can't disclose the identity of your client based on what?

A Based on client confidentiality.

Q So is it fair to say there is no support in your report and you're not willing to provide that support as to the statement on page 7?

A Based on my experience.

Q At page 8 of your report you state that Doug Filardo embezzled \$1,419,874.83 from Star Subaru through payments to a fictitious vendor for advertising work that was never performed. Do you see that?

A I do.

Q Do you acknowledge that there is nothing in your report that allowed a reader to determine any specific act of theft that comprises that amount?

A It's in Appendix A.

Q Tell me where in Appendix A I can look at and see a listing of every specific act that comprises the 1.4 million dollars which